IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11383 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAYAN JASHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Vadodara City on 20th June, 2000 in exercise of powers conferred upon him

under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 22nd June, 2000.

2. The detaining authority in grounds of detention has mentioned that the offence under Section 66 (B) 65 (A) (E) and 81 has been registered against the petitioner under the Bombay Prohibition Act on 27th March,2000 before Makarpura Police Station. Taking into consideration the investigation in this crime, the detaining authority came to the conclusion that the petitioner was selling illegal liquor and was obstruction to public peace and public health. Detaining authority also took into consideration the statements of three witnesses who on assurance of anonymity of identity offered their statements before the concerned authority and narrated the incidents of 4th March,2000, 25th April, 2000 and 10th May, 2000, whereby on suspicion that the concerned witness was providing information to Police and to society about his illegal liquor business, the above three witnesses were beaten by the petitioner. From the above material, the detaining authority came to the conclusion that the petitioner was a "bootlegger" within the meaning of Section 2(b) of the PASA Act and was obstruction to public peace and public health. Hence the impugned order was passed against the petitioner.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. The detention order, inter alia, was vehemently challenged on the ground that the same being vitiated by non-application of mind by the detaining authority. In para-4 of the ground of detention, the authority has observed that though the petitioner has been released on bail, the procedure for the cancellation of the bail was likely to consume more time, has not been resorted to.

5. From the rival contentions and from the factual aspects of the case, it clearly emerges that the offences under the Bombay Prohibition Act as aforesaid was registered against the petitioner on 27th March, 2000. Thereafter, three incidents dated 4th of March, 25th of April and 10th of May,2000 are narrated by the witnesses and those crimes are not registered. The petitioner appears to have been released on bail in the above said crimes registered before the Makarpura Police Station immediately in March, 2000. After his arrest, the petitioner was on bail right from end of March till the detention order came to be passed against the petitioner.

If we take 10th of May, 2000 to be the date as narrated by the witness last, in point of time, on which the petitioner continued illegal acts, then also, the observation of the detaining authority that the proceedings for the cancellation of bail was likely to consume more time, cannot find favour with the established law.

6. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995 (2) GLR 1134, the Division Bench of this Court observed that the detaining authority failed to consider less drastic remedy of cancellation of bail available to him and, therefore, the order of detention was held vitiated on non-application of mind This view is fortified by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September.

7. Non-application of mind by the detaining authority clearly emerges from the observation made by him in the grounds of detention. The detaining authority had sufficient time to resort to less drastic remedy available to him i.e. procedures for the cancellation of bail under Sec. 437(5) of the Cr.P.C. Instead, the detaining authority has simply brushed aside this remedy by merely saying that the cancellation of bail proceedings was likely to consumer more time, without resorting to the same and, therefore the detention order is vitiated and is required to be set aside.

8. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Vadodara City on 20th June, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Nayan Jashbhai Patel is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair